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Supreme Court, U.S.
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No. 02-1019

IN THE

Supreme Court of the United States

STATE OF ARIZONA,

Petitioner,

v.

RODNEY JOSEPH GANT,

Respondent.

On Writ of Certiorari to the Arizona Court of Appeals Division Two

BRIEF OF RESPONDENT

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QUESTION PRESENTED

Whether the court below properly concluded that the State failed to satisfy its burden of proving that the warrantless, suspicionless search of the interior of respondent's automobile was justified as a search incident to arrest, when the arrest took place after respondent had voluntarily exited and walked away from his automobile, the State presented no evidence that the interior of the automobile was arguably within respondent's "area of immediate control" at the time of the arrest, and the search took place after the police had handcuffed him and secured him in the back of a police vehicle?

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INTRODUCTION

The briefs of the petitioner and its *amici* are striking for how little attention they devote to the question whether the court below reached the correct result in this case, *i.e.*, whether the court below properly concluded that the State failed to satisfy its burden of proving that the warrantless search of the interior of respondent's vehicle was lawful as a search incident to arrest. These briefs spend little time discussing the facts of this case or the question whether the search in this case was reasonable. Instead, petitioner and its *amici* focus their attack on the test that the court below used to resolve this case, and would apply in future cases. Specifically, petitioner and its *amici* criticize the lower court's formulation of a test that turns on the reasons that the suspect exited the vehicle because such a distinction requires an inquiry into the suspect's subjective awareness of whether police were present.

Petitioner's and its *amici*'s attempt to turn this case into a referendum on the lower court's test is not surprising. That test's focus on the suspect's state of mind is problematic, and respondent acknowledges that it is not the best approach for resolving these Fourth Amendment issues on a prospective basis. But, critically, the Court need not reach the issue of whether the test or reasoning employed by the court below is sound. This Court's role is to review judgments, not correct or critique opinions. Thus, the Court's fundamental task here is to decide whether the court below correctly concluded that the State failed to satisfy its burden of proving the lawfulness of the warrantless search of respondent's vehicle – regardless of the appropriateness of the reasoning employed by the lower court to reach that result.

Petitioner's and its *amici*'s strategy also is not surprising, because when the inquiry is properly focused on the judgment below – rather than on statements in the court's opinion – it

becomes clear that the court below reached the correct result. The facts presented here (to the limited extent that the State developed any facts at the evidentiary hearing before the lower court) reveal an arrest and search scenario that is worlds away from the situation this Court addressed in *New York* v. *Belton*, 453 U.S. 454 (1981). Specifically, it is undisputed that respondent was arrested after he had exited and walked away from his vehicle, and there is no evidence in the record to suggest that he was within reaching distance, or even lunging distance, of any part of the vehicle at the time of the arrest. Respondent was then promptly handcuffed and placed in a police vehicle. Then, and only then, did the police conduct the search. Thus, the exigent circumstances that this Court held are sufficient to justify a warrantless search incident to arrest – a threat to officer safety or the potential for destruction of evidence – either were wholly dissipated at the time of the search, or never existed in the first place. Instead, the car search in this case was conducted under the least exigent circumstances imaginable – while respondent sat handcuffed in the back of a police car parked in a residential driveway in the custody of at least three police officers on the scene. Accordingly, the lower court's judgment that the State failed to prove the lawfulness of the warrantless search is unassailable and should be affirmed.

STATEMENT OF THE CASE

1. On August 25, 1999, officers of the Tucson Police Department investigated a report of possible narcotics activity at a residence in Tucson, Arizona. J.A. 10, 19. Respondent answered the door of the residence and informed the officers that the resident of the home was not in. *Id.* The officers then ran a computer records check on respondent and discovered that he had a suspended driver's license and an outstanding warrant for failure to appear. *Id.* at 20. They left the residence without arresting him on that outstanding warrant. *Id.*

Later in the day, the police officers returned to the residence. J.A. 20. They made contact with a man sitting in the backyard, whom they subsequently arrested on several outstanding warrants. *Id.* at 5, 10. They then made contact with a woman sitting in a vehicle parked in front of the house. *Id.* at 10. The woman consented to a search of the car and the police discovered and seized a crack pipe containing residue pursuant to that search. *Id.* at 10-11.

Respondent then drove up to the residence in a vehicle that one of the officers (Officer Griffith) recognized from their previous encounter. The car pulled into the driveway. J.A. 5, 20. Officer Griffith shined his flashlight into the vehicle and recognized the driver as respondent, the individual who had answered the door earlier in the day. *Id.* As Officer Griffith walked toward the vehicle, respondent got out and walked away from the vehicle. *Id.* Officer Griffith called respondent by name and he voluntarily identified himself. *Id.* Officer Griffith then arrested respondent on the outstanding warrant and for driving with a suspended license. Respondent was handcuffed and placed in the back of a police vehicle. *Id.* at 5, 20-21. A search of respondent's person uncovered $319 in cash, but no weapons or contraband. *Id.* at 11. The officers also seized respondent's car keys. Trial Tr. 9/13/00, at 79.

After respondent was placed in the back of the patrol car, two additional officers (Officers Nolan and Reed) searched respondent's vehicle without obtaining either a search warrant or his consent. J.A. 6, 21. Office Nolan testified at trial that when conducting the search, he looked for "[j]ust anything of evidence as search incident to his arrest." Trial Tr. 9/13/00, at 21.

2. Respondent was indicted for possession of cocaine for sale in violation of Ariz. Rev. Stat. § 13-3408 and for possession of drug paraphernalia in violation of Ariz. Rev. Stat. § 13-3415(A). Respondent filed a motion to suppress the evidence seized from his automobile on the ground that the warrantless search of the vehicle was unlawful because it

was conducted without probable cause or reasonable suspicion and was not properly incident to his arrest. J.A. 4-8. In its response to the motion, the State argued that the warrantless search was lawful under the "automobile exception" to the warrant requirement because the police had probable cause to search the vehicle and, alternatively, because the search had been conducted incident to an arrest. *Id.* at 9-14.

The trial court held a suppression hearing. At this hearing, the State did not introduce *any* evidence or present *any* witnesses. Two police officers were present at the hearing pursuant to the State's subpoena, but the State's attorney elected not to present their testimony or otherwise develop the record. J.A. 19-22. Instead, the judge summarized his understanding of the facts based on the parties' pleadings. *Id.* at 19-21. Both counsel then stipulated to these facts. *Id.* at 21-22.[1] See Pet. Br. 3 n.1 ("The operative facts are not in dispute."). The trial court denied the motion to suppress on the ground that the vehicle search was lawfully incident to respondent's arrest. J.A. 30-32.

After a jury trial, respondent was convicted on both counts. The trial court sentenced him to concurrent prison terms, the longer of which was three years.

3. Respondent appealed his convictions on the ground, *inter alia*, that the trial court erred in denying his motion to suppress evidence. The Arizona Court of Appeals reversed. The court stated at the outset that because warrantless searches are presumptively illegal, the State bears the burden of proving the lawfulness of such searches. Pet. App. A-2.

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[1] Defense counsel agreed that the judge's factual summary was consistent with the facts recited in the motion to suppress, which were drawn from "assertions of facts in the [police] reports." J.A. 21. The state's counsel similarly asserted that he had "no disagreement with the facts" and was "happy to submit, also, on [his] pleading as well." *Id.* at 22.

The court then held that "the state failed to meet its burden of proving that the warrantless search of Gant's vehicle was a lawful search incident to his arrest." *Id.* at A-9. In reaching this conclusion, the court specifically catalogued the numerous gaps in the factual record. *Id.* at A-7 to A-8. Indeed, the court took the unusual step of stating that it was "unfortunate" that the record was not based on witnesses' testimony, admitted evidence, or a written stipulation of facts because the record was silent as to "many of the critical facts that bear upon resolution of the contested issues." *Id.* at A-8. The court reiterated, however, that the State bore the burden of persuasion and therefore had a duty to "ensure[] that the record contains adequate information for judicial decision-making." *Id.*

The court held that *New York* v. *Belton*, 453 U.S. 454 (1981), "does not extend to this situation" because "Gant voluntarily – that is, not in response to police direction – stopped his vehicle, exited it, and began to walk away from it." Pet. App. A-5.[2] In addition, the court stated its agreement with the holdings of other courts that *Belton* did not apply in situations where the arrestee was apprehended outside the vehicle. *Id.* (citing *United States* v. *Strahan*, 984 F.2d 155 (6th Cir. 1993), and *United States* v. *Fafowora*, 865 F.2d 360 (D.C. Cir. 1989)). The court agreed that in these circumstances:

> the twin concerns of officer safety and evidence preservation that justify, at least theoretically, the search-incident-to-arrest exception to the warrant requirement discussed in *Chimel* [v. *California*, 395 U.S. 752 (1969)], disappear because the vehicle's

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[2] The court further held that nothing in the record "shows or suggests" that respondent "had seen officers or any other sign of police activity at the residence . . . either when he arrived at the residence or before he exited his vehicle," and that "the record does not support a finding that Gant was or should have been aware of anyone's approach as he exited his vehicle." Pet. App. A-7.

> passenger compartment is not available to the arrestee at the time the police encounter or arrest the person.

Id. at A-5 to A-6.

The court then stated that:

> *Belton* is limited to the particular factual situation in which it arose. Accordingly, it applies only when "the officer initiates contact with the defendant, either by actually confronting the defendant or by signaling confrontation . . . while the defendant is still in the automobile, and the officer subsequently arrests the defendant (regardless of whether the defendant has been removed from or has exited the automobile)."

Pet. App. A-6 (omissions in original) (quoting *United States* v. *Hudgins*, 52 F.3d 115, 119 (6th Cir. 1995)). Neither the State nor respondent had proposed or advocated this test. Applying these principles to the factual record before it, the court concluded that "the search of Gant's vehicle was outside the scope of *Belton*." *Id.* at A-8.

Having concluded that "the narrow *Belton* exception is inapplicable" (Pet. App. A-8), the court applied the test announced in *Chimel*. In a single sentence, the court considered and rejected the notion that the search was lawful under *Chimel*, finding that "the passenger compartment of [Gant's] vehicle was not within his immediate control at the time of his arrest." *Id.* (internal quotation marks omitted) (quoting *Chimel*, 395 U.S. at 763). The court also rejected the State's alternative argument that the police had probable cause to search the vehicle under the automobile exception to the warrant requirement, citing the "sparsely developed factual record . . . on this issue." *Id.* at A-9.

Judge Pelander specially concurred. He stated that "[b]ased on the record here, the state simply did not carry its burden of establishing the legality of the warrantless search of Gant's vehicle." Pet. App. A-11.

4. The Arizona Supreme Court denied review without comment. Pet. App. B-1.

SUMMARY OF ARGUMENT

The Court's fundamental task in this case, as in all search and seizure cases under the Fourth Amendment, is to determine whether the search at issue was reasonable. Petitioner and its *amici* attempt to divert the Court's attention from that issue and focus it instead on the merits of the subjective awareness test embodied in the court's opinion below to address future cases. This Court, however, sits to review judgments, not correct opinions. Accordingly, the Court need not pass judgment on the reasoning used by the court below, and should decide only whether the court below correctly concluded that the State failed to fulfill its burden of proving that the warrantless search of respondent's vehicle was lawful.

I. Under the Fourth Amendment, warrantless searches are *per se* unreasonable, subject only to a few narrow exceptions that are strictly tied to and justified by the circumstances that give rise to the need to search. *Katz* v. *United States*, 389 U.S. 347, 357 (1967); *Terry* v. *Ohio*, 392 U.S. 1, 19 (1968). It is the government's burden to prove the lawfulness of a warrantless search. *United States* v. *Jeffers*, 342 U.S. 48, 51 (1951).

This Court has recognized an exception to the warrant requirement for searches conducted incident to lawful arrests, based on two – and only two – exigency justifications: "(1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial." *Knowles* v. *Iowa*, 525 U.S. 113, 116 (1998). Given the inherent and imminent risks that accompany custodial arrests, this Court has held that it would be impractical at best and foolhardy at worst to require police to go through the process of obtaining a warrant prior to any search.

In *Chimel* v. *California*, 395 U.S. 752, 763 (1969), this Court defined the permissible scope of searches conducted incident to arrests as limited to the arrestee's person and "the area 'within his immediate control,' – construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." In *New York* v. *Belton*, 453 U.S. 454, 460 n.3 (1981), this Court "determine[d] the meaning of *Chimel*'s principles" in the context of vehicle searches conducted incident to arrests. This Court established a bright-line rule in *Belton* to govern the permissible *scope* of vehicle searches conducted incident to lawful arrests: police may search the passenger compartment in its entirety, including open and closed containers, but may not search the trunk. *Id.* at 460. Such vehicle searches may be conducted incident to arrests in two scenarios, both of which are derived from the *Chimel* "area of immediate control" test: (1) when the arrestee is an occupant of the vehicle, and (2) when the arrestee is a recent occupant of the vehicle and the interior compartment of the vehicle is arguably within the arrestee's area of immediate control at the time of the arrest.

II. The holding of the court below was that the State completely failed to prove that the warrantless search of respondent's vehicle was reasonable under the Fourth Amendment. This holding was plainly correct. Indeed, on this record, no other conclusion is possible. Respondent was arrested outside the vehicle, and the State simply failed to introduce any evidence that could permit a finding – as required to affirm the search under *Belton* – that the area within respondent's immediate control at the time of the arrest arguably included the automobile.

The soundness of the court of appeals' ruling is confirmed by the fact that there were no exigent circumstances here that made it impractical for police to obtain a warrant prior to the search. There was no possible evidence in the car to be preserved. Respondent was arrested for driving with a

suspended license and on an outstanding warrant for failure to appear, so the State already had all of the conceivable evidence of these offenses.

The search of respondent's car likewise cannot be justified as having been necessary to protect officer safety. At the time of the arrest, there was no evidence of a threat to officer safety posed by the contents of the car. It is undisputed that respondent was arrested after he exited and walked away from his vehicle. The court of appeals concluded, based on the available evidence, that the passenger compartment was not within respondent's area of immediate control at the time of his arrest. Therefore, as a practical matter, respondent had little or no ability to access a weapon located in his car at the time of his arrest.

In any event, the police had entirely neutralized all realistic safety issues by the time of the search. It is undisputed that respondent was fully secured in handcuffs in the back of a police vehicle before the search took place. Because the police had completely foreclosed respondent's ability to access a weapon in his car, there was no remaining exigency associated with the vehicle. Under these circumstances, the warrantless search was unreasonable.

Petitioner and its *amici* argue that the search was lawful notwithstanding the fact that respondent was handcuffed in a police vehicle, citing numerous lower court decisions upholding such searches. But those decisions cannot be squared either with the principles and reasoning of *Belton* or with any reasonable understanding of the fundamental protections of the Fourth Amendment. Nor do petitioner and its *amici* present any evidence to support their counterintuitive assertion that weapons in arrestees' vehicles present any genuine threat to police officers once the arrestees have been handcuffed and secured in a police vehicle.

III. Principles articulated by this Court in *Chimel* and *Belton* provide the police and courts with all the necessary

guidance to determine whether the search of a vehicle incident to an arrest is reasonable under the Fourth Amendment. Thus, the Court need not consider, and should not adopt, the alternative "spatio-temporal proximity" test proposed by petitioner and its *amici*. This test is at odds with this Court's precedent because (1) it ignores the principle that the reasonableness of a particular search depends on *all* of the facts and circumstances surrounding the search by improperly elevating the plainly *relevant* factors of time and distance to *dispositive* status; and (2) it is wholly untethered to the exigency rationales that justify the search incident to arrest exception. In addition to these constitutional flaws, it also fails to provide a workable rule that will yield consistent results. As a result, the "spatio-temporal proximity" test amounts to little more than a rule of convenience for police officers that would unduly expand the permissible range of vehicle searches conducted incident to arrests such that this "exception" to the warrant requirement would effectively swallow the rule.

ARGUMENT

As in all search and seizure cases under the Fourth Amendment, the Court's fundamental task here is to determine whether the search at issue was reasonable – an inquiry that requires focused attention to all of the facts and circumstances of the particular case. See, *e.g.*, *Sibron* v. *New York*, 392 U.S. 40, 59 (1968) ("The constitutional validity of a warrantless search is pre-eminently the sort of question which can only be decided in the concrete factual context of the individual case."); *South Dakota* v. *Opperman*, 428 U.S. 364, 375 (1976) ("'[W]hether a search and seizure is unreasonable within the meaning of the Fourth Amendment depends upon the facts and circumstances of each case.'") (alteration in original) (quoting *Cooper* v. *California*, 386 U.S. 58, 59 (1967)); *Ohio* v. *Robinette*, 519 U.S. 33, 39 (1996) ("the 'touchstone of the Fourth Amendment is reasonableness,'"

which "is measured in objective terms by examining the totality of the circumstances" in the particular case). The Court's precedents do not invite scrutiny of hypothetical situations or attempts to formulate general principles to govern cases that are not presented to it. Instead, the Court's focus is properly aimed at how the law applies to the precise factual situation presented.

Recognizing that the result reached below was plainly correct – *i.e.*, that there is no argument to be made that the State satisfied its burden of proving that the warrantless search was lawful – petitioner and its *amici* attempt to divert the Court's attention from that issue and focus it instead on the merits of the subjective awareness test embodied in the court's opinion below to address future cases. While this approach is hardly surprising, given the deficiencies in the State's showing, this Court sits to review judgments, not correct opinions. See, *e.g.*, *Schenck* v. *Pro-Choice Network of W. N.Y.*, 519 U.S. 357, 384 n.12 (1997); *Rutan* v. *Republican Party*, 497 U.S. 62, 76 (1990). Thus, whether the particular formulation adopted by the lower court is appropriate is beside the point. The question that this Court must answer is whether the warrantless search of respondent's car was lawful, not whether the reasoning used by the court below was sound. For the reasons that follow, the judgment below was correct.

I. THE FOURTH AMENDMENT PERMITS WARRANTLESS SEARCHES INCIDENT TO ARRESTS ONLY IN LIMITED SITUATIONS THAT PRESENT SPECIFIC EXIGENT CIRCUMSTANCES.

1. The Fourth Amendment to the United States Constitution guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated" and provides that "no Warrants shall issue, but upon probable cause." U.S. Const amend. IV. The Court has interpreted this language to mean that warrantless searches "are *per se*

unreasonable under the Fourth Amendment – subject only to a few specifically established and well-delineated exceptions." *Katz* v. *United States*, 389 U.S. 347, 357 (1967) (footnote omitted); see also *Chimel* v. *California*, 395 U.S. 752, 762 (1969) ("the general requirement that a search warrant be obtained is not lightly to be dispensed with"). The warrant requirement protects citizens from unreasonable searches "[b]y requiring that conclusions concerning probable cause and the scope of a search 'be drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime.'" *Arkansas* v. *Sanders*, 442 U.S. 753, 759 (1979) (quoting *Johnson* v. *United States*, 333 U.S. 10, 14 (1948)). Because the warrant requirement protects citizens against fundamental intrusions by the State,[3] there are only a few "jealously and carefully drawn" exceptions to the warrant requirement, *Jones* v. *United States*, 357 U.S. 493, 499 (1958), and these exceptions have been studiously "delineated." *Sanders*, 442 U.S. at 760.

It is the government's burden to prove the lawfulness of a warrantless search, *e.g.*, by proving that one of the exceptions to the warrant requirement clearly applies. *United States* v. *Jeffers*, 342 U.S. 48, 51 (1951) ("[T]he burden is on those seeking the exemption [from the warrant requirement] to show the need for it."); *Sanders*, 442 U.S. at 760; *Coolidge* v. *New Hampshire*, 403 U.S. 443, 455 (1971). See also *McDonald* v. *United States*, 335 U.S. 451, 456 (1948) (there must be "a showing by those who seek exemption [from the warrant requirement] that the exigencies of the situation made that course imperative").

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[3] As this Court has noted, "[t]he [Fourth] Amendment was in large part a reaction to the general warrants and warrantless searches that had so alienated the colonists and had helped speed the movement for independence" from England. *Chimel*, 395 U.S. at 761.

This Court has recognized an exception to the warrant requirement for searches conducted incident to lawful arrests. Accordingly, this Court has identified two – and only two – rationales for this exception: "(1) the need to disarm the suspect in order to take him into custody, and (2) the need to preserve evidence for later use at trial." *Knowles* v. *Iowa*, 525 U.S. 113, 116 (1998) (citing cases going back to *Weeks* v. *United States*, 232 U.S. 383, 392 (1914)). See also *United States* v. *Robinson*, 414 U.S. 218, 234 (1973) ("The justification or reason for the authority to search incident to a lawful arrest rests quite as much on the need to disarm the suspect in order to take him into custody as it does on the need to preserve evidence on his person for later use at trial."). Thus, the search incident to arrest exception to the warrant requirement is an exigency-based exception.[4] It is premised on the notion that any custodial arrest inherently presents "danger to the police officer," which "flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty" (*id.* at 234 n.5), and also presents a risk that the suspect will attempt to destroy or conceal evidence. *Id.* at 234. Thus, this Court has held that it would be impractical at best and foolhardy at worst to require police to go through the process of obtaining a warrant prior to any search necessary to find dangerous weapons or to preserve evidence. Accordingly, this Court has held that warrantless searches in arrest scenarios can be permissible under the Fourth Amendment. *Id.* at 235 (a lawful search incident to arrest "is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment").

2. This Court addressed the "proper extent" or scope of the search incident to arrest exception in *Chimel*, 395 U.S. at

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[4] *See New York* v. *Belton*, 453 U.S. 454, 457 (1981) (describing the search incident to arrest exception as based on the rationale that "'the exigencies of the situation' may sometimes make exemption from the warrant requirement 'imperative.'") (quoting *McDonald*, 335 U.S. at 456).

762. In *Chimel*, the police executed an arrest warrant at a suspected burglar's home and then (without a search warrant) searched "the entire three-bedroom house, including the attic, the garage, and a small workshop," as well as the contents of drawers. *Id.* at 754. This Court held that the scope of the search was "'unreasonable'" under the Fourth Amendment. *Id.* at 768.

In so holding, the Court established general principles to govern the permissible scope of a search conducted incident to a lawful arrest. As an overarching principle, the Court reiterated its statement from *Terry* v. *Ohio*, 392 U.S. 1, 19 (1968), that "[t]he scope of [a] search must be strictly tied to and justified by the circumstances which rendered its initiation permissible." *Chimel*, 395 U.S. at 762 (internal quotation marks omitted) (alterations in original). It then established two general principles that govern the acceptable scope of each search. First, the Court held that it is "entirely reasonable" under the Fourth Amendment for police to search an arrestee's person in conjunction with a lawful arrest "in order to remove any weapons that the [arrestee] might seek to use in order to resist arrest or effect his escape," and in order to prevent "concealment or destruction" of evidence. *Id.* at 763. Second, the Court held that:

> the area into which an arrestee might reach in order to grab a weapon or evidentiary items must, of course, be governed by a like rule. A gun on a table or in a drawer in front of one who is arrested can be as dangerous to the arresting officer as one concealed in the clothing of the person arrested. There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control,' – construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence.

Id.

In rejecting the argument that the search of Chimel's entire house was "reasonable," the Court stated that the reasonableness of a given search always depends upon the "facts and circumstances" of the particular case, but noted that "those facts and circumstances must be viewed in the light of established Fourth Amendment principles." *Id.* at 765 (internal quotation marks omitted). In this regard, the Court made clear that it adopted the "area of immediate control" limitation on the permissible scope of searches conducted incident to arrests because that boundary ensures that warrantless searches are linked to, and do not go beyond, the two exigency factors that justify the exception to the warrant requirement in the first place. As the Court stated:

> No consideration relevant to the Fourth Amendment suggests any point of rational limitation, once the search is allowed to go beyond the area from which the person arrested might obtain weapons or evidentiary items. The only reasoned distinction is one between a search of the person arrested and the area within his reach on the one hand, and more extensive searches on the other.

Id. at 766 (footnote omitted).

3. In *New York* v. *Belton*, 453 U.S. 454 (1981), this Court addressed the proper application of the exception for a search incident to an arrest to the "recurring factual situation" of vehicle searches. *Id.* at 460. Specifically, the Court undertook to answer the following question: "When the *occupant* of an automobile is subjected to a lawful custodial arrest, does the constitutionally permissible scope of a search incident to his arrest include the passenger compartment of the automobile in which he was riding?" *Id.* at 455 (emphasis added).

The specific facts and circumstances of *Belton* are important for understanding this Court's holding. In *Belton*, a single state trooper pulled over a speeding vehicle on the New York Thruway. *Id.* The vehicle had four occupants. *Id.* The

officer's inspection of the driver's operating license and the vehicle registration revealed that none of the occupants owned the vehicle or was related to the owner. During the traffic stop, the officer smelled burnt marijuana and noticed an enveloped marked "Supergold" – which the officer associated with marijuana – on the floor of the car. *Id.* at 455-56. The officer then ordered all four men out of the car and placed them under arrest on the shoulder of the Thruway for unlawful possession of marijuana. *Id.* at 456. He then patted down each occupant and "split them up into four separate areas of the Thruway . . . so they would not be in physical touching area of each other." *Id.* (internal quotation marks omitted). The officer, however, had no backup and only one pair of handcuffs.[5] Accordingly, he did not and could not handcuff the occupants, place them in his patrol car, or otherwise secure or restrain them in any way. Nor, being on the shoulder of an interstate highway, did he or could he remove them from the vicinity of the vehicle. Indeed, the officer testified that he and the arrestees were "all in close proximity of the car."[6] After finding marijuana in the "Supergold" envelope, the officer issued *Miranda* warnings and searched each occupant. *Id.* The officer then searched the passenger compartment of the car and found cocaine in the pocket of Belton's jacket, which was in the back seat. *Id.*

In concluding that the search of the car was lawful under the Fourth Amendment as a search incident to arrest, this Court started with *Chimel*, in particular, the principle announced in *Terry* and reiterated in *Chimel* that "'the scope of [a] search must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible.'"

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[5] *See* Joint Appendix at A-55 to A-56, *New York* v. *Belton*, 453 U.S. 454 (1981) (No. 80-328) (testimony of state trooper that he had only one set of handcuffs and did not use them on any of the arrestees).

[6] Joint Appendix at A-19, *New York* v. *Belton*, 453 U.S. 454 (1981) (No. 80-328); *see also id.* (officer agreeing that he and the arrestees were "[a]ll around the car").

Belton, 453 U.S. at 457 (alteration in original) (quoting *Chimel*, 395 U.S. at 762, (quoting *Terry*, 392 U.S. at 19)). The Court then reaffirmed the "area of immediate control" test announced in *Chimel*, but noted that lower courts had found it difficult to apply in cases concerning "the proper scope of a search of the interior of an automobile incident to a lawful custodial arrest of its *occupants*." *Belton*, 453 U.S. at 457-59 (emphasis added) (citing lower courts cases reaching conflicting results). In particular, this Court acknowledged that lower "courts have found no workable definition of 'the area within the immediate control of the arrestee' *when that area arguably includes the interior of an automobile and the arrestee is its recent occupant*." *Id.* at 460 (emphasis added).

Stressing the importance of a clear standard to guide police and citizens in this "recurring factual situation," the Court observed that the cases addressing such situations "suggest[ed] the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].'" *Id.* (second alteration in original) (quoting *Chimel*, 395 U.S. at 763). In order to establish a "workable rule" for this "category of cases," the Court "read *Chimel*'s definition of the limits of the area that may be searched in light of that generalization," and held "that when a policeman has made a lawful custodial arrest of the *occupant* of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Id.* (emphasis added) (footnote omitted). The Court further explained that police may also examine the contents of containers found within the passenger compartment, whether open or closed, because "if the passenger compartment is within reach of the arrestee, so also will containers in it." *Id.* The vehicle's trunk, however, may not be searched. *Id.* at 460 n.4.

The Court emphasized that its holding did "no more than determine the meaning of *Chimel*'s principles in this particular and problematic context. It in no way alters the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests." *Id.* at 460 n.3.

Ultimately, then, *Belton* established a bright-line rule to govern the permissible *scope* of automobile searches conducted incident to lawful arrests: police may search the passenger compartment in its entirety, including open and closed containers, but may not search the trunk. This is a "bright-line" rule that dispenses with the need for fact-specific inquiries in individual cases into whether particular areas of the passenger compartment or particular containers found therein satisfy the *Chimel* "area of immediate control" test. In practical terms, *Belton* teaches that if the Fourth Amendment permits police to search the inside o a car, then they may search all of it, including any containers found therein.

The question becomes when does the Fourth Amendment permit police to search a car incident to an arrest? This Court identified two such situations in *Belton*, both of which are derived from and consistent with the *Chimel* "area of immediate control" test. First, the Court's repeated references to vehicle "occupants," see, *e.g.*, 453 U.S. at 455, 459, 460, make plain that police may search a car incident to a lawful arrest when the arrestee is an "occupant" of the car. Second, the Court established that police may search a car when the "area [within the immediate control of the arrestee] *arguably includes the interior of an automobile* and the arrestee is its *recent occupant*." *Id.* at 460 (emphasis added). The quoted language is the only reference in the *Belton* opinion to an arrestee who is a "recent occupant," and establishes that police may search a car incident to a lawful arrest when an individual is arrested outside a vehicle that he recently occupied, so long as the arrestee's area of immediate control

at the time of the arrest "arguably" includes the passenger compartment of the vehicle. See Pet. Br. 5 ("*Belton* applies whenever the passenger compartment of a vehicle is – arguably and generally – 'within the area into which an arrestee might reach in order to grab a weapon or evidentiary item'").

The question whether the area within the immediate control of an arrestee who is an occupant or recent occupant includes the interior of the automobile, like all reasonableness inquiries under the Fourth Amendment, necessarily requires consideration of all of the facts and circumstances surrounding the search at issue. See *Chimel*, 395 U.S. at 765 ("[t]he recurring questions of the reasonableness of searches" depends upon "the facts and circumstances – the total atmosphere of the case") (internal quotation marks omitted) (alteration in original). As petitioner recognizes, "[t]he 'totality of the circumstances' concept is a familiar standard" to police officers in the field. Pet. Br. 24.

The search in *Belton* itself was upheld because it fell into the second *Belton* category. The four individuals were arrested outside of the vehicle that they had recently occupied, but the Court concluded that items in the passenger compartment were "within the area which we have concluded was 'within the arrestee's immediate control' within the meaning of the *Chimel* case." 453 U.S. at 462. This conclusion finds ample support in the *Belton* record. As shown above, the State of New York presented evidence demonstrating that the four individuals were "all in close proximity . . . around the car" at the time of their arrest (on the side of a busy highway), and none of them was restrained or secured in any way. Joint Appendix at A-19, *New York* v. *Belton*, 453 U.S. 454 (1981) (No. 80-328). Given the "close proximity" of the single officer and four arrestees, and the officer's inability to restrain them, any one of the arrestees, if not all of them, could have reached or lunged into the vehicle at any moment to retrieve a weapon or destroy evidence.

That threat was no doubt of immediate concern to the police officer because he knew that one or more of the arrestees likely was under the influence of drugs and he had no effective way to control all four arrestees simultaneously. Under these circumstances, the only way for the police officer to neutralize the threat and protect himself was to search the vehicle and remove any weapons or evidence. Accordingly, the Court understandably concluded in *Belton* that the passenger compartment of the vehicle was within the arrestees' "area of immediate control," and that the warrantless search was justified as a lawful incident to the arrest.

Under these Fourth Amendment principles, the facts of this case (as they were developed by the State below) demonstrate that this case is fundamentally different from *Belton*. Accordingly, the court below properly concluded that the search of respondent's vehicle was not reasonably incident to his arrest.

II. THE COURT BELOW PROPERLY HELD THAT THE STATE FAILED TO SATISFY ITS BURDEN OF PROVING THAT THE WARRANTLESS SEARCH OF RESPONDENT'S VEHICLE WAS LAWFUL AS A SEARCH INCIDENT TO HIS ARREST.

The holding of the court below (as opposed merely to statements in the opinion) was that the State failed to satisfy its burden of proving the legality of the warrantless search of respondent's vehicle. Specifically, the court held that "the state failed to meet its burden of proving that the warrantless search of Gant's vehicle was a lawful search incident to his arrest." Pet. App. A-9. See also *id.* at A-11 ("[T]he state simply did not carry its burden of establishing the legality of the warrantless search of Gant's vehicle.") (Pelander, J.,

specially concurring).[7] In reaching this conclusion, the court emphasized the sparse and incomplete factual record developed by the State at the suppression hearing. In particular, the court noted that the State failed to present evidence concerning "many of the critical facts that bear upon resolution of the contested issues." *Id.* at A-8. The court emphasized that it was the State's duty to "ensure[] that the record contains adequate information for judicial decision-making" because the State bore the "burden of persuasion." *Id.*[8] The lower court's holding – that the sparse factual record proffered by the State did not establish any basis for dispensing with the warrant requirement in this case – is correct, and should be affirmed by this Court.

A. The State Failed To Satisfy Its Burden Of Proving That The Area Within Respondent's Immediate Control At The Time Of His Arrest Included The Interior Of The Automobile.

Chimel and *Belton* establish that in order for a warrantless search of the passenger compartment of an automobile to be lawful under the Fourth Amendment as a search incident to arrest, the State bears the burden of demonstrating that the arrestee either (1) was an occupant of the vehicle at the time of the arrest, or (2) was a recent occupant and "'the area within the immediate control of the arrestee' . . . arguably includes the interior of [the] automobile." *Belton*, 453 U.S. at 460. It is undisputed that respondent exited and walked away from his vehicle prior to his encounter with the police and,

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[7] The court of appeals also held that the State failed to meet its burden of proving that the warrantless search was lawful under the "automobile exception" to the warrant requirement. Pet. App. at A-9. The State does not challenge that ruling here.

[8] The State's assertion that the deficiencies in the record below "related solely to the subjective factors . . . that the State contends are irrelevant," Pet. Br. 3 n.1, is wishful thinking. As demonstrated below, the court of appeals correctly concluded that the warrantless search of respondent's car cannot be sustained based on the poorly developed record in this case.

therefore, was not an occupant at the time of his arrest. Thus, the State must satisfy the second prong of *Belton*.

The court of appeals correctly concluded that the State of Arizona utterly failed to satisfy its burden of proving that the area within respondent's immediate control at the time of his arrest arguably included the interior of his automobile. Indeed, the court did not view this as a close question: it rejected the notion that the "area of immediate control" test was satisfied in a single sentence. See Pet. App. A-8 ("[T]he passenger compartment of [Gant's] vehicle was not within his immediate control at the time of his arrest . . . .") (internal quotation marks omitted) (quoting *Chimel*, 395 U.S. at 793). This conclusion was plainly correct. Indeed, on this record, no other conclusion is possible.

The State simply failed to introduce any evidence that could permit a finding that the area within respondent's immediate control at the time of his arrest arguably included the interior of the automobile. Significantly, the facts that could establish such a finding are among the "critical facts" (Pet. App. A-8) that are absent from this record. For example, the record does not contain any evidence of the distance between respondent and the vehicle at the time of the arrest, or the relative locations of the vehicle, the officer, and respondent.[9] Nor is there any description of the size of the yard or driveway that could provide even a rough idea of these distances and locations. Similarly, the record does not contain any evidence of the locations of the other officers who were present at the scene. Nor does the record establish

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[9] Petitioner glibly asserts that the "distance between Gant's exit from the vehicle and his arrest were de minimis." Pet. Br. 26. The court of appeals, however, specifically rejected the State's similar assertion below that the trial court made implicit factual findings that respondent "had been only a few steps away from the officer when contact occurred." Pet. App. A-7 n.4. The court of appeals noted that "nothing in the trial court's factual summary, nor any reasonable inferences therefrom," supports such an assertion. *Id.*

whether any of the car doors or windows were open, or whether the car doors were locked or unlocked. Accordingly, the State wholly failed to introduce any evidence that could support a finding that respondent would have been able to reach (even by lunging) any part of the vehicle at the time of the arrest, much less reach into the interior. The silence of the record speaks loudly in this case and wholly supports the judgment below. The Court need go no further in affirming that judgment.

B. There Were No Exigent Circumstances That Justified The Warrantless Search Of Respondent's Vehicle.

The soundness of the court of appeals' ruling is confirmed by the fact that there were no exigent circumstances here that made it impractical for police to obtain a warrant prior to the search. Respondent is mindful of this Court's statement in *Robinson*, 414 U.S. at 235 – which it repeated in *Belton*, 453 U.S. at 459 – that the parties need not "litigate[] in each case the issue of whether or not there was present one of the reasons supporting the authority for a search" incident to a lawful arrest.[10] Nevertheless, the two exigency rationales – the need to ensure officer safety and to prevent destruction of evidence – are the sole justifications for the search incident to arrest exception to the warrant requirement, and this Court consistently has adhered to the principle that the scope of a search must be strictly tied to the circumstances which rendered its initiation permissible. *Terry*, 392 U.S. at 19; *Chimel*, 395 U.S. at 762; *Belton*, 453 U.S. at 457. Moreover, the essential purpose of the "area of immediate control" test is to delineate circumstances in which these exigencies exist. See *Chimel*, 395 U.S. at 766 ("No consideration relevant to

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[10] *See also Robinson*, 414 U.S. at 235 (the authority to search incident to arrest, "while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found").

the Fourth Amendment suggests any point of rational limitation, once the search is allowed to go beyond the area from which the person arrested might obtain weapons or evidentiary items."). Therefore, it is highly relevant to the reasonableness inquiry in this case that the evidence preservation rationale is wholly inapplicable and that any threat to officer safety had long since dissipated by the time of the search. Simply put, the warrantless search of respondent's car was not justified by exigent circumstances because any exigency that had existed at the time of the arrest was gone by the time of the search.

1. There Was No Possibility That Any Relevant Evidence In The Car Would Be Lost Or Destroyed By Respondent.

Respondent was arrested for driving with a suspended license and on an outstanding warrant for failure to appear. For these offenses, there could not possibly have been a need to preserve evidence that would justify the warrantless search of respondent's car. This Court's decision in *Knowles* v. *Iowa*, 525 U.S. 113 (1998), is precisely on point. The police in *Knowles* searched the defendant's car without a warrant after issuing the defendant a citation for speeding, and that search uncovered marijuana under the driver's seat. *Id.* at 114. This Court rejected the notion that the search could have been justified by the need to discover and preserve evidence:

> Once Knowles was stopped for speeding and issued a citation, all the evidence necessary to prosecute that offense had been obtained. No further evidence of excessive speed was going to be found either on the person of the offender or in the passenger compartment of the car.

Id. at 118.

The same is true here. At the time of respondent's arrest for driving with a suspended license and on an outstanding warrant for failure to appear, the State already had all of the

conceivable evidence of these offenses. There simply was no possibility that the car could have contained additional evidence of these offenses. Thus, there was no evidence in the car to be preserved, and none that could have been destroyed. Accordingly, the evidence preservation justification for a warrantless search incident to an arrest is inapplicable here.[11]

2. The Safety Of The Officers Could Not Justify Searching The Car Either At The Time Of The Arrest Or When The Search Occurred.

The search of respondent's car likewise cannot be justified as having been necessary to protect officer safety. To be sure, respondent's arrest, like all custodial arrests, presented a danger to the police that justified a search of *his person*. Such a search was performed in this case and respondent has never contested its lawfulness. That search did not uncover any weapons or contraband. J.A. 11. But the search of respondent's car is a different matter. Respondent was arrested outside of the car, and the record in this case fails to reveal any legitimate threat to officer safety at the time of the arrest that could have justified the search of the car. Moreover, even if a threat to officer safety existed at the time of the arrest, any such threat had been wholly eliminated by the time of the search itself.

a. At the time of respondent's arrest, there was no evidence of a threat to officer safety that justified the search of his car. It is undisputed that respondent was completely outside of and away from the vehicle at the time of his arrest. The court of appeals concluded, based on the available evidence, that "the passenger compartment of [Gant's] vehicle was not within his immediate control at the time of

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[11] The Court in *Knowles* expressly rejected the State's argument that the warrantless search could be justified based on the possibility that the suspect might attempt to destroy evidence of another as yet undetected crime. 525 U.S. at 118.

his arrest," Pet. App. A-8 (internal quotation marks omitted). This conclusion is unassailable, given the State's failure to create any contrary record on this issue. Therefore, as a practical matter, respondent's ability to access a weapon located in his car at the time of his arrest was substantially reduced if not completely eliminated.

The only risk to police at the time of the arrest was that respondent would attempt (and be successful in the attempt) to (1) escape from the armed state trooper who was arresting him and evade the additional officers who were on the scene; (2) return to his car; (3) enter his car; and (4) locate and retrieve a weapon – all before he could be apprehended.[12] Any concern about this sequence of events is too remote to be deemed reasonable. It cannot support a determination that "exigent" circumstances existed that justified dispensing with a warrant.

The court of appeals was correct to consider the facts – which were undisputed in this case – that respondent was arrested outside his vehicle and that he had voluntarily exited the vehicle without any knowledge of a police presence (rather than at the direction of police). See Pet. App. A-7 ("Nothing [in the record] shows or suggests that Gant . . . had seen officers or any other sign of police activity at the residence . . . either when he arrived at the residence or before he exited his vehicle."). Where, as here, it is undisputed that

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[12] Petitioner's assertion that "other individuals on the premises who apparently were associated with Gant's illegal drug activity presented additional risk to the police" (Pet. Br. 13), is not supported by any evidence in the record. Indeed, petitioner did not even introduce any evidence establishing the presence of other persons on the premises, except for a man and woman in the yard who (as far as we can tell from the record) were under arrest by the time of respondent's arrest. J.A. 5, 10-11. Accordingly, while the presence of confederates at the scene of an arrest no doubt can present a danger to police, and therefore is a relevant factor under a totality-of-the-circumstances analysis, there is no evidence of any such danger here that could have justified the warrantless search of respondent's car.

an individual voluntarily exited the vehicle prior to any contact with the police and was arrested some distance away from it, those facts are plainly *relevant* to the question whether the search at issue was reasonable. Common sense must play a role in reasonableness inquiries under the Fourth Amendment. *United States* v. *Rabinowitz*, 339 U.S. 56, 83 (1950) (Frankfurter, J., dissenting) ("To say that the search must be reasonable is to require some criterion of reason"). Someone arrested at a distance from a vehicle has less (or no) opportunity to grab weapons or destroy evidence as compared to someone arrested inside a vehicle. Similarly, when someone exits and distances himself from a vehicle prior to the arrest without any knowledge that the police are present, common sense dictates that the suspect will be much less likely or able to grab weapons or destroy evidence from the vehicle in conjunction with the arrest than when police have to undertake the inherently risky task of extricating a suspect from the vehicle. See Pet. Br. 16 ("[A] person bent on evading arrest is more likely to emerge brandishing a weapon when forewarned of police officers' presence.").

The court of appeals was correct to consider these undisputed facts in this case. However, respondent does not endorse the court of appeals' attempt to formulate a test for future cases focusing exclusively on the suspect's awareness of police presence and whether or not any such awareness motivated the suspect to exit the vehicle. Such subjective inquiries can present difficult proof problems (although they did not here), and therefore cannot provide the basis for a workable test that can be applied consistently by police officers in the field or by courts to the myriad fact situations that arise in this context.

b. In any event, the police had entirely neutralized all realistic safety issues by the time of the search. It is undisputed that respondent was fully secured in handcuffs in the back of a police vehicle before the search took place. Thus, the police had completely foreclosed respondent's

ability to access a weapon in his car. As a result, the search of the car cannot possibly be characterized as having been necessary to "disarm" him "in order to" take him into custody, *Knowles*, 525 U.S. at 116; *Robinson*, 414 U.S. at 234. At the time of the car search, respondent was "disarmed" and taken "into custody" – his person had been searched for weapons, he had been separated from his vehicle, and he was restrained inside a police vehicle. Under these circumstances, the contents of the vehicle posed no threat to the officers. Since there was no remaining exigency associated with the vehicle, there was no justification for the warrantless search of the vehicle and the search was, therefore, unreasonable.[13]

Petitioner and its *amici* argue that the search of respondent's car was lawful, notwithstanding the fact that he was handcuffed in a police vehicle at the time of the search. Pet. Br. 26; U.S. Br. 22; 15 States Br. 6-7; NAPO Br. 17-25. They contend that this position is consistent with *Belton* and note that numerous lower courts have upheld vehicle searches where the suspect "was arrested, handcuffed, and placed in a

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[13] The United States' odd assertion (U.S. Br. 22) that respondent did not challenge the search on this ground in the courts below is incorrect. Respondent raised precisely this argument in his motion to suppress. J.A. 7 (challenging the search on the ground that because "he was handcuffed and secured in the back of a patrol car when the search was conducted, the area searched was in no way reachable by Mr. Gant"). He also raised this argument before the Arizona Court of Appeals. *See* Appellant's Opening Br. at 17-18, *Arizona* v. *Gant*, 43 P.3d 188 (Az. Ct. App. 2002) (No. 2CA-CR 00-0430) (arguing that the search was "not reasonable because it was not grounded in the foundational rationales for which [the search-incident-to-arrest exception] was created," based on the facts that respondent was "arrested outside of his locked vehicle" and "restrained by handcuffs in the back seat of a police car"). Finally, respondent argued in his opposition to the petition for certiorari that because he was "secured in the back of a police car at the time of the actual search," the search was "not grounded in at least one of the [exigency] rationales" and, therefore, was "not reasonable." Br. In Opp'n 11-12.

squad car at the scene of the arrest before his vehicle was searched." U.S. Br. 22-24; NAPO Br. 20.

To be sure, lower courts have so held. But those decisions cannot be squared either with the principles and reasoning of *Belton* or with any reasonable understanding of the fundamental protections of the Fourth Amendment. This Court's case law interpreting the Fourth Amendment is clear: there are only two exigent justifications for the search-incident-to-arrest exception to the warrant requirement, and searches incident to arrest must be grounded in these justifications. *Belton*, 453 U.S. at 457 ("'the scope of [a] search must be "strictly tied to and justified by" the circumstances which rendered its initiation permissible'") (alteration in original) (quoting *Chimel*, 395 U.S. at 762 (quoting *Terry*, 392 U.S. at 19)). Where police have foreclosed an arrestee's access to weapons or evidence in a car by restraining and securing him, they have eliminated all possible exigencies associated with the car that could justify a warrantless search of the vehicle. Fundamentally, the search incident to arrest exception to the warrant requirement exists solely because of the exigent risks, and thus it cannot apply when the particular exigencies that justify it are absent. Cf. *Preston* v. *United States*, 376 U.S. 364, 368 (1964) (car search purportedly conducted incident to an arrest not reasonable under the Fourth Amendment when it occurred at a point where "there was no danger that any of the men arrested could have used any weapons in the car or could have destroyed any evidence of a crime").

Significantly, the position of petitioner and its *amici* ignores this Court's clear statement in *Belton* that its holding "in no way alter[ed] the fundamental principles established in the *Chimel* case regarding the basic scope of searches incident to lawful custodial arrests." 453 U.S. at 460 n.3. There can be no argument that the passenger compartment of a vehicle falls within the "reaching distance" of an individual who has been taken away from the vehicle, handcuffed, and secured in

a police vehicle. Therefore, petitioner and its *amici* would permit warrantless searches under the guise of *Belton* that could not possibly be permissible under the principles set forth in *Chimel*. In effect, these courts have construed *Belton* as a radical departure from *Chimel* that greatly expanded police authority to conduct warrantless searches by untethering that authority from any reasonable conception of the suspect's "area of immediate control." In addition, this position cannot be reconciled with the fact that *Belton* permits a search of a vehicle's passenger compartment, but not the trunk – a distinction that is wholly arbitrary when the suspect's access to either part of the car is equally foreclosed.

Neither petitioner nor its *amici* address any of the language or logic of *Belton* and *Chimel* which, as demonstrated above, undercut their position. The United States attempts to muster support for this position by citing statements from the *Belton* dissent, but the majority did not address these statements, much less endorse them. See U.S. Br. 24 & n.7.

Petitioner and its *amici* are left to argue that vehicle searches are justified because arrestees "continue to pose a potentially grave threat to law enforcement personnel" even after they are placed in handcuffs in police vehicles. U.S. Br. 25; see also Pet. Br. 13-14, 26; NAPO Br. 21-24. But the anecdotal evidence they cite does not support this utterly counterintuitive proposition. While handcuffs sometimes fail and suspects sometimes escape from police vehicles, neither petitioner nor its *amici* managed to find a single case in which the police came to harm because an escapee *retrieved a weapon from his vehicle.*[14] Indeed, in all of the cases cited by

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[14] The United States cites an incident on January 12, 1998, in which an individual purportedly "free[d] himself," retrieved a rifle from his car and killed a police officer (U.S. Br. 26 n.8), but that individual had not been placed under arrest and was never under police control, much less handcuffed or confined in a police vehicle. F.B.I., U.S. Dep't of Justice, *Uniform Crime Reports: Law Officers Killed and Assaulted* 50 (1998). The United States also refers to an incident on September 28, 2001, in

petitioner and its *amici*, the threat to the officers came from arrestees gaining control of the officer's service weapons, retrieving weapons hidden on their persons, using weapons that did not come from their car, or using no weapons at all. See *United States* v. *Sanders*, 994 F.2d 200, 210 n.60 (5th Cir. 1993) (citing instances in which suspects either gained control of the officers' weapons or retrieved weapons hidden on their persons); *Plakas* v. *Drinski*, 19 F.3d 1143, 1144-46 (7th Cir. 1994) (civil rights suit brought by estate of arrestee who escaped from police vehicle, retrieved a fireplace poker from a nearby house and brandished it at police before being fatally shot by police); *Forge* v. *City of Dallas*, No. 3-03-CV-0256-D, 2003 WL 21149437, at *1 (N.D. Tex. May 19, 2003) (arrestee escaped from police vehicle and physically struggled with police without a weapon; arrestee eventually died from wounds inflicted by police during struggle). Taking petitioner's and its *amici*'s reasoning to its logical conclusion, *Plakas* would mean that the police would be authorized to conduct a warrantless search of any nearby house to round up all sharp objects. In sum, petitioner and its *amici* have presented no evidence that weapons in arrestees' vehicles present any genuine threat to police officers once the arrestees have been handcuffed and secured in police vehicles. As a result, if an arrestee is handcuffed and secured in a police vehicle, a warrantless search of the arrestee's vehicle is flatly "unreasonable."

Ultimately, when a suspect is secured in the back of a police vehicle – confined and immobilized – it is neither impractical nor risky for police to go through the process of obtaining a warrant prior to any search. To the contrary, it seems eminently reasonable to require a warrant where, as

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which an arrestee freed himself from his handcuffs, "retrieve[d] a handgun," and killed an officer (U.S. Br. 26 n.8), but in that case, the arrestee used a weapon he had hidden on his person. F.B.I., U.S. Dep't of Justice, *Uniform Crime Reports: Law Officers Killed and Assaulted* 49 (2001).

here, contacting a magistrate and waiting for a ruling presents no particular risk to the officers or anyone else on the scene (particularly since officers who would otherwise conduct the search are free to guard the arrestee or his vehicle instead). In this case, a warrant would have been refused because it is undisputed that the police did not have probable cause to search the car. Thus, interposing a neutral magistrate between the police and respondent would have prevented the search and protected respondent's Fourth Amendment rights.

The reasonableness of requiring a warrant in this case is bolstered by comparing it to the radically different situation presented in *Belton*. In *Belton*, the single officer's safety was in jeopardy throughout the encounter with the four defendants. He was alone on the side of a busy highway with no back-up as he tried to handle four individuals, one or more of whom likely was under the influence of marijuana (given the lingering smell of marijuana and the presence of the "Supergold" wrapper). 453 U.S. at 455-56. These signs of drug activity also raised a reasonable inference that the car in fact contained relevant evidence. The officer did not have the means to handcuff or otherwise secure all the suspects. Nor did he have the space to move the suspects a safe distance from the car. Indeed, the suspects were in close proximity to the car (and the officer) throughout the encounter. It was therefore impossible for the officer to conduct his business while simultaneously monitoring the four unrestrained individuals to prevent them from reaching or lunging to retrieve weapons or evidence from the car. Because the arrestees were unsecured and unsecurable, the only way for the officer to neutralize any threat posed by weapons in the car and to prevent the destruction of evidence was to search the car immediately. In these circumstances, requiring the officer to obtain a warrant prior to the search could have put his life in jeopardy.

This case is a far cry from *Belton*. Petitioner's assertion that this case is a "run-of-the-mill *Belton* situation," Pet. Br.

26, is wishful thinking. Here, it was respondent who was outnumbered, as there were at least three officers at the scene at the time his vehicle was searched. Rather than being dangerously located on the side of a highway, the encounter took place in a residential driveway. All of the evidence of the non-violent, minor traffic offenses had been collected at the time of the arrest. Respondent had calmly walked away from the car before he became aware of the police presence and the police had fully secured him in the back of the police vehicle without incident. Simply put, there was no need for the officers to conduct an immediate search of the car in order to protect themselves, as there plainly was in *Belton*. Accordingly, the officers should have been required to obtain a warrant prior to the search.

At the end of the day, the police officers' search in this case should be seen for what it was: exactly the kind of warrantless exploratory search that the Fourth Amendment was designed to prevent. The testimony of one of the searching officers in this case is telling, as he admitted he was looking for "[j]ust anything of evidence." Trial Tr. 9/13/00, at 21. While suspicionless, exploratory searches often in fact do uncover evidence of crimes, the premise of the Fourth Amendment is that it is better to let evidence go undetected when there is no basis for a warrant and no applicable exception to the warrant requirement than to intrude on an individual's privacy.[15] Respondent suffered such an intrusion in this case.

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[15] Moreover, as a practical matter, police have abundant opportunities to find evidence of other crimes in cars. For example, police can obtain a suspect's consent to a car search (as occurred with the female suspect found at the scene in this case), *Florida* v. *Jimeno*, 500 U.S. 248, 250-51 (1991), conduct inventory searches, *Colorado* v. *Bertine*, 479 U.S. 367, 371-73 (1987), and seize property that is in plain view, *Payton* v. *New York*, 445 U.S. 573, 586-87 (1980). In addition, under the automobile exception to the warrant requirement, police can always search a car immediately if they have probable cause to believe it contains evidence of a crime. *United States* v. *Ross*, 456 U.S. 798 (1982).

III. PETITIONER AND ITS *AMICI* PROPOSE AN UNWORKABLE TEST THAT HAS NO SUPPORT IN PRECEDENT OR PRINCIPLE.

As demonstrated in Sections I and II, *Chimel* and *Belton* define the parameters for when police can conduct a warrantless search of the passenger compartment of a vehicle incident to the arrest of the vehicle's recent occupant. *Chimel* and *Belton* establish that such a search is reasonable under the Fourth Amendment when the State can demonstrate that "'the area within the immediate control of the arrestee' . . . arguably includes the interior of [the] automobile." *Belton*, 453 U.S. at 460. The court below properly determined that the State failed to satisfy its burden of proving that the search of respondent's vehicle satisfied this test, and this Court need go no further to resolve this case. Accordingly, the Court need not consider, and should not adopt, the alternative "spatio-temporal proximity" test suggested by petitioner and its *amici*. This test has no mooring in the precedent of this Court, is unworkable in its application, and would unduly expand the permissible range of car searches conducted incident to arrests such that this "exception" to the warrant requirement would effectively swallow the rule.

Petitioner contends that "the only viable test is whether the individual was arrested while he was a recent occupant of the vehicle, i.e., while he was in close spatio-temporal proximity to his occupancy of the vehicle." Pet. Br. 24. The United States similarly argues that "the officer may search the passenger compartment of the vehicle that the arrestee occupied as a contemporaneous incident of the arrestee's lawful custodial arrest," and asserts that the "contemporaneous-incident standard" is satisfied so long as the arrest and search are not "'so separated in time or by intervening events that the latter cannot fairly be said to have been incident to the former.'" U.S. Br. 4, 27 (quoting *United States* v. *Abdul-Saboor*, 85 F.3d 664, 668 (D.C. Cir. 1996)); see also *id.* at 28 ("'close proximity'" is analyzed both

"'temporally and spatially'") (quoting *United States* v. *Thornton*, 325 F.3d 189, 196 (4th Cir. 2003)). See also 15 States Br. 8 & n.3 (asserting that the only "limits" to "*Belton*'s bright-line rule" are "temporal and spatial" ones).

This "spatio-temporal proximity" test amounts to little more than a rule of convenience for police officers that gives them *carte blanche* to conduct searches of vehicles in almost all situations involving the arrest of a recent occupant, even when those situations are entirely divorced from the exigency justifications upon which the search incident to arrest exception rests. Indeed, petitioner and its *amici* come dangerously close to arguing for an automatic right to search cars in all instances of custodial arrest, which turns Fourth Amendment law on its head: Rather than being *per se* unreasonable, warrantless searches of vehicles are presumed to be permissible when a recent occupant is arrested, subject only to the two "limitations" of attenuated time and/or distance. U.S. Br. 26. The time and distance factors, however, are in many cases entirely within the control of the police. As a practical result, therefore, this test would permit warrantless vehicle searches incident to the arrests of recent occupants in the majority – if not the vast majority – of cases. While this result may suit the police,[16] it flies in the face of the core Fourth Amendment principle that warrantless searches are "*per se* unreasonable," *Katz*, 389 U.S. at 357, and that exceptions to the warrant requirement must be "jealously and carefully drawn." *Jones*, 357 U.S. at 499.[17]

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[16] *See* NAPO Br. 1 (stating that police "regularly" search vehicles upon arresting occupants).

[17] Petitioner and its *amici* seize upon language from a footnote in *Michigan* v. *Long*, 463 U.S. 1032, 1049 n.14 (1983), in support of their position. Pet. Br. 11; U.S. Br. 13-14; 15 States Br. 5. This language, however, was nothing more than *dicta* because *Michigan* v. *Long* did not involve a search conducted in conjunction with a custodial arrest, but rather a protective search for weapons conducted in the absence of an arrest. The Court was neither focused on nor decided any questions about

The "spatio-temporal proximity" test is at odds with this Court's precedent in two significant respects. First, this test ignores the principle that the lawfulness of a particular search is ultimately a question of reasonableness, and that the reasonableness inquiry must encompass all of the facts and circumstances of the individual case. *Sibron*, 392 U.S. at 59; *Opperman*, 428 U.S. at 375; *Robinette*, 519 U.S. at 39. Essentially, this test converts the plainly *relevant* considerations of time and distance into *dispositive* factors, while ignoring all other factors surrounding the arrest. Just two Terms ago, this Court unanimously rejected a lower court's approach of reviewing certain factors in isolation from each other rather than looking at the totality of the circumstances to determine whether police had reasonable suspicion of wrongdoing. *United States* v. *Arvizu*, 534 U.S. 266, 273-74 (2002). Yet, elevating isolated factors (time and distance) above all others is precisely what petitioner and its *amici* propose here.[18]

The analytical weakness of the proposed crabbed approach is perhaps best demonstrated by petitioner's position that the arrest scenario in this case "is a run-of-the-mill *Belton* situation" (Pet. Br. 26), and the United States' position that this case is a "typical scenario[]" that is "clearly encompasse[d]" by *Belton*. U.S. Br. 28. As demonstrated above, see *supra* at 32-33, the two arrest scenarios are starkly different in numerous respects. Only by examining time and

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the permissible scope of warrantless vehicle searches conducted incident to arrests. Moreover, the broad language of the footnote, which is not supported by any citations to *Belton*, simply cannot be squared with the language or logic of either that opinion or its predecessors. *See* Section I, *supra*.

[18] Petitioner characterizes its spatio-temporal test as a "totality of the circumstances" test, but this makes no sense. Pet. Br. 24-25. This test may look at the facts of particular cases, but it does not look at the "totality" of those facts. *See id.* at 20 ("[O]fficers should focus on the timing and location of the arrest in relation to the arrestee's occupancy of the automobile").

distance to the exclusion of all other factors could petitioner and the United States assert that the arrests in this case and in *Belton* are functionally identical, and that the car searches in both cases were reasonable under the Fourth Amendment. Ultimately, a determination of the reasonableness of a warrantless search under the Fourth Amendment cannot be made by resort only to a stopwatch and a measuring tape.

The second constitutional shortcoming with the spatio-temporal test is that it is wholly untethered to the exigency rationales that justify the search incident to arrest exception. Petitioner acknowledges, as it must, that *Belton* "grounded its holding on the historic rationales underlying the search-incident-to-arrest doctrine – officer safety and preservation of evidence." Pet. Br. 5, 9. Yet the spatio-temporal test has no nexus to those justifications because it focuses on time and distance in the abstract, without any consideration of how those facts bear upon the whether the arrestee might obtain weapons or evidence. Indeed, petitioner and its *amici* effectively would abandon the "area of immediate control" test that is the touchstone of *Chimel*, and preserved by *Belton*, even though this Court correctly concluded that warrantless searches have no "point of rational limitation" – *i.e.*, no tie to the exigent circumstances that justify the exception to the warrant requirement – once they are allowed to go beyond this area. *Chimel*, 395 U.S. at 766.

This is not an abstract or theoretical concern. A review of recent cases (many cited with approval by petitioner and its *amici*) demonstrates that there is no logical stopping point to the scope of warrantless car searches, once courts abandon the "area of immediate control" test and the exigency rationales upon which it is grounded. See, *e.g.*, *United States* v. *Arango*, 879 F.2d 1501, 1503, 1506 (7th Cir. 1989) (upholding vehicle search as incident to arrest where suspect was arrested a block away from his vehicle and was returned to his vehicle under the direction and control of police; court reasoned that suspect was again "in proximity to the jeep" and that search was

"'nearly contemporaneous'" to arrest), *cited with approval at* Pet. Br. 25, 15 States Br. 11, and NAPO Br. 23; *United States* v. *McLaughlin*, 170 F.3d 889, 890-92 (9th Cir. 1999) (upholding vehicle search as incident to arrest where the search took place five minutes *after the arrestee was removed from the scene and taken to jail*; court reasoning that "the defendant's arrest, the filling out of the impound paperwork, and the search of his car were all part of a continuous, uninterrupted course of events, all occurring within a relatively brief period of time"), *cited with approval at* U.S. Br. 23 n.6; but see NAPO Br. 24 (acknowledging tension with other decisions);[19] *United States* v. *Patterson*, 65 F.3d 68, 69-71 (7th Cir. 1995) (upholding vehicle search as incident to arrest although officer never observed arrestee, who was working under the hood of his vehicle, inside the vehicle); *Cason* v. *Commonwealth*, 530 S.E.2d 920, 922, 924 (Va. Ct. App. 2000) (upholding moped search as incident to arrest where police never saw suspect on moped, but suspect was carrying a motorcycle helmet and suspect told police that the

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[19] *See also United States* v. *Snook*, 88 F.3d 605, 606 (8th Cir. 1996) (upholding warrantless vehicle search as incident to arrest although the search took place after the arrestee was removed from the scene and taken to jail), *cited with approval at* U.S. Br. 19 n.4, 15 States Br. 9-10, NAPO Br. 16; *United States* v. *Johnson*, 114 F.3d 435, 440-41 (4th Cir. 1997) (same); *United States* v. *McCrady*, 774 F.2d 868, 871-72 (8th Cir. 1985) (same).

McLaughlin and these other cases simply cannot be reconciled with *Belton*, or with this Court's pre-*Belton* decisions. *Chambers* v. *Maroney*, 399 U.S. 42, 47 (1970) ("[T]he reasons that have been thought sufficient to justify warrantless searches carried out in connection with an arrest no longer obtain when the accused is safely in custody at the station house."); *Preston*, 376 U.S. at 367 ("Once an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest").

moped was in a yard approximately 50-75 feet away), *cited with approval at* 15 States Br. 13.[20]

In addition to the constitutional flaws with the spatio-temporal test, it also fails to provide a "simple, workable standard" in its application, as petitioner contends. Pet. Br. 22. The spatio-temporal test does not solve line-drawing problems in this area, but instead merely shifts the line-drawing inquiry to issues of time and place. The questions invited by the spatio-temporal test are obvious. Is a search that takes place five minutes after the arrest permissible? Ten minutes? 30 minutes? What about two hours, assuming there are no "intervening" events – whatever that means – between the arrest and the search? Is ten feet close enough to the car? 20? 50? As a result of such line-drawing issues, the spatio-temporal test would not lead to greater certainty or consistent outcomes in this area.

Indeed, when lower courts have considered such questions, they have produced disparate results. For example, in *United States* v. *Vasey*, 834 F.2d 782, 787-88 (9th Cir. 1987), the Ninth Circuit held that a search conducted 30-40 minutes after a suspect was handcuffed and placed in a squad car was not incident to arrest. Other courts, however, have found warrantless searches that took place one-and-one-half hours after the arrest to be "reasonable." *United States* v. *Fiala*, 929 F.2d 285, 288 (7th Cir. 1991). Some courts have permitted warrantless vehicle searches incident to arrest when the suspect was 30 feet from the car at the time of initial contact with the police, *People* v. *Bosnak*, 633 N.E.2d 1322, 1323, 1326 (Ill. App. Ct. 1994), while others have determined that *Belton* did not apply when the suspect was 30 feet from the car. *United States* v. *Strahan*, 984 F.2d 155, 159 (6th Cir. 1993). Still others have permitted car searches incident to

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[20] Indeed, the "spatio-temporal proximity" test arguably would permit police to conduct warrantless vehicle searches when they arrest suspects who were walking towards a car.

arrest when the suspect was 50-75 feet from the vehicle. *Cason*, 530 S.E.2d at 924. This crazy-quilt of results makes plain that focusing on time and distance is anything but a "simple" or "workable" inquiry, and is incapable of yielding consistent outcomes.[21]

In sum, the "spatio-temporal proximity" test is flawed as a matter of constitutional theory and lacks real-world workability. Moreover, if the Court were to adopt this test, the search-incident-to-arrest exception to the warrant requirement would effectively swallow the rule against

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[21] *Amici* 15 States' proposal for fleshing out the application of the spatio-temporal test is even more problematic and less workable. *Amici* propose the following test:

> In order to invoke the *Belton* bright-line rule, it is submitted that the temporal issues could be resolved by resort to the following test: Whether the officer knows *or had reason to know* the arrestee recently exited the vehicle . . . . The spatial issues could be resolved by resort to the following: The arrestee must be spatially proximate to the vehicle at the time of contact with the police or when the arrest is effected. This distance could be viewed as the distance from which the arrestee could reach the vehicle *should he struggle and get away from the police.*"

15 States Br. 8 n.3 (emphasis added).

As for the temporal element, nothing in *Belton* or its predecessors provides a basis for elevating the officer's knowledge of whether the arrestee exited the vehicle to dispositive status, to the exclusion of all other considerations. Clearly, such knowledge has no bearing whatsoever upon either of the exigency justifications. Moreover, by requiring an inquiry into the officer's knowledge, this test would give rise to all of the subjectivity and proof problems that petitioner and its *amici* criticize with respect to a test that relies on the suspect's state of mind. As for the spatial element, defining proximity in terms of whether the defendant could reach the car if he escaped the police is impossibly vague and subjective. It would essentially require an inquiry into the likelihood that the suspect could outrun the police to the vehicle – an inquiry that could only "frustrate the police and the courts." Pet. Br. 21. Moreover, the Fourth Amendment rights of suspects should not turn on their age, physical attributes, or level of physical fitness, as they necessarily would under this test.

warrantless searches. Accordingly, the Court should decline to adopt this proposed test.

CONCLUSION

The judgment of the Arizona Court of Appeals should be affirmed.

Respectfully submitted,

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